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No. 683

# In the Supreme Court of the United States

OCTOBER TERM, 1930

ALFRED SCOTT ALDRIDGE

*v.*

THE UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA*

## BRIEF ON BEHALF OF THE UNITED STATES

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### OPINION OF THE COURT BELOW

The opinion of the Court of Appeals of the District of Columbia in the above-entitled case may be found at Page 45 of the Record. It is not at this time officially reported.

### JURISDICTION OF THIS COURT

The judgment of the Court of Appeals of the District of Columbia affirming the judgment of the Supreme Court of the District of Columbia was entered January 6, 1931. (R. 49.) On February 25, 1931, this Court granted certiorari, pursuant to Section 240–(a) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

In granting the writ, this Court limited the arguments and the briefs to the question raised by the ruling of the trial court prohibiting a voir dire examination of prospective jurors relative to racial prejudice. (R. 49.)

## STATEMENT OF THE CASE

The defendant, a negro, twenty-two years old, was indicted for murder in the first degree. (R. 3.) The indictment charged that the defendant killed Harry J. McDonald, a white police officer. A plea of not guilty was entered. (R. 4.) In the month of January, 1930, the defendant was tried, but the jury was unable to agree. On the 26th of February, 1930, he again was placed on trial. At the time the trial court was conducting an examination of the jury upon its voir dire, counsel for petitioner proposed and requested that the trial judge question prospective jurors relative to racial prejudice. This application was made at the bench, out of the hearing of the prospective jurors, counsel for the petitioner stating that he did not like to ask that question in public. The court was informed by counsel for the petitioner that he had been informed that one of the members constituting the previous jury entertained racial prejudice, which fact, he suggested, may have influenced the juror's deliberations. (R. 10–11.) Observing that that matter dealt with another jury in another case, the court observed (R. 10):

> I don't think that would be a proper question, anymore than to ask whether they liked an Irishman or a Scotchman.

Counsel noted an exception (R. 11), and the trial proceeded. The Government exercised four peremptory challenges and the defense five. (R. 11.)

The defendant subsequently was convicted of murder in the first degree and sentenced to death. (R. 6.)

## ARGUMENT

The only question herein involved is the right of a defendant in a criminal prosecution to inquire of prospective jurors whether they entertain racial prejudices.

It is to be noted that counsel did not request the court to interrogate jurors as to any prejudice they might entertain by reason of the fact that the particular defendant in the case on trial was of the colored race.

Therefore it is urged that an effort generally to inquire as to race prejudice, without any particular applicability to the defendant at bar, properly was refused by the court by reason of the form alone of the proposed interrogatory.

The question herein presented has been before the Federal courts on only one occasion other than the case at bar. That also came up in the District of Columbia, in the case of *Crawford* v. *United States,* 41 F. (2d) 979 (Ct. of Appeals). The

opinion of the court on this point is as follows (p. 980):

> In support of this contention, counsel for defendant rely upon the case of *Pinder* v. *State*, 27 Fla. 370, * * * where it was held error, in a trial where the defendant belonged to the negro race, to refuse to ask the jurors the question, "Could you give the defendant, who is a negro, as fair and impartial a trial as you could a white man, * * * upon the same evidence?"
>
> As affecting the discretion of the trial court, in questioning or permitting the questioning of the jury on voir dire, local conditions may have an important bearing. The social situation in Florida, as between white and colored races, may be such as to create a feeling of prejudice that would justify such an inquiry, while the conditions in another state or locality might be such that to refuse the question would not be regarded as prejudicial to the interests of the defendant; * * *.

In the *Crawford case* cited above it is true that the court below, while refusing to ask a somewhat similar question as to racial prejudice, did ask the jurors generally if they knew of any reason why it would not be fair for the prospective jurors to try that case. The record in the case at bar does not disclose that such a question was asked herein. With that sole difference the *Crawford case* is practically identical with the instant case.

In considering the *Crawford case* it is urged that the most important portion of the opinion dealing

with this point is that wherein the court states that local conditions may have an important bearing in determining the question.

To ask a question such as that requested would be to inject into a criminal case in the District of Columbia this unfortunate element of possible race prejudice.

The Fourteenth and Fifteenth Amendments to the Constitution of the United States, taken in conjunction with the statutes of the United States seeking to eradicate any discrimination on the basis of race, color, or creed, must be taken together as indicating a manifest intention of this Government to eliminate in courts of the land anything subversive of our hallowed doctrine that all men are created free and equal—of our cherished pride in our institutions that allow all men to stand equal before the bar of justice.

The contention of the petitioner in this case may be reduced in effect to an application to this Honorable Court to notice judicially that the colored race does not occupy the same position in the courts of the capital of the Nation as does the white race. This contention is made in the face of the assertion of the Court of Appeals of the District of Columbia in this very case that in the District of Columbia the colored race is accorded all the privileges and rights under the law that are afforded the white race, especially the right to practice in the courts, serve on the jury, etc.

To admit of the introduction of such questions into the trial of cases in the Federal courts would be to pave the way for the introduction of questions dealing with religious, political, fraternal, and other allied topics.

No lawyer will deny that any defendant in any criminal case has the right reasonably to inquire of prospective jurors as to facts which may assist that defendant in procuring a fair and impartial jury. On the other hand, no one will deny that a reasonable limitation must be placed upon such a right. No one will concede that this privilege can be carried to absurd or extravagant lengths.

The record in this cause is barren as to any showing or basis that properly would require this Court to ask such question. The record discloses, conformably to the statutes of the United States, that defendant was provided with a list of jurors and of witnesses two full days in advance of the date of trial. (R. 48.) If anything came to the attention of counsel with regard to these prospective jurors that in his estimation would prevent a fair and impartial trial, then no such showing was made to the court.

Possessing a full list of jurors, with their addresses, for several days prior to trial, counsel was in a position where he might ascertain any factor that might impede any juror in arriving at a fair and impartial verdict in the case by reason of any

consideration, such as race prejudice. No such matter was brought to the attention of the court.

Nor does the record disclose that there was anything said in court on the part of any juror that properly would impel the court to propound such a question.

The only thing in the record dealing with even a vestige of a condition existing that would make proper such a question is the bare recital of counsel for the defendant that at the last trial of the case he understood that there was a woman on the jury, a Southerner, who said the fact that the defendant was a negro and the deceased a white man somewhat influenced her. Of course, that was in another case. That took place with regard to another jury. The woman in question was not a member of the jury in this cause. In short, there was nothing even suggesting that there was in the prospective list of jurors in this case anyone who had any such animus. In this case the petitioner availed himself of only five of the twenty peremptory challenges provided him by law. Now, on this petition he asks this Court to reverse the judgment of the lower court on the surmise that the denial of the question requested possibly left on that jury some one with a prejudice against the colored race—with the further conjecture that this person with the prejudice against the colored race could not lay that bias aside and give the petitioner a fair and impartial trial.

In other words, petitioner requests this Court to ignore the finding of both local courts of the District as to local conditions bearing on the proposition of whether or not such question is proper.

An analogous case, in principle, at least, is to be found in *Connors* v. *United States,* reported in 158 U. S. 408. In that case, involving violation of the election laws, this Court reviewed the action of the trial judge in refusing to allow jurors to be questioned as to their political affiliations. The action of the Court was affirmed:

> Particular stress is laid upon the refusal of the court to allow the question to jurors, "Would your political affiliations or party predilections tend to bias your judgment in this case either for or against this defendant?" In the absence of any statement tending to show that there was some special reason or ground for putting that question to particular jurors called into the jury box for examination, it can not be said that the court erred in disallowing it. If the previous examination of a juror on his voir dire or the statements of counsel, or any facts brought to the attention of the court, had indicated that the juror might, or possibly would, be influenced in giving a verdict by his political surroundings, we would not say that the court could not properly, in its discretion, if it had regarded the circumstances as exceptional, have permitted the inquiry whether the juror's political affiliations or

party predilections would bias his judgment as a juror. But no such exceptional circumstances are disclosed by the record, and the court might well have deemed the question—unaccompanied by any statement showing a necessity for propounding it—as an idle one that had no material bearing upon the inquiry as to the qualifications of the juror, and as designed only to create the impression that the interests of the political party to which the accused belonged were involved in the trial. The public should not be taught, by the mode in which trials of this character are conducted, that the prosecution of a crime against the laws securing the freedom and integrity of elections for Representatives in Congress will be regarded by the court as, in effect, a prosecution of a political party to which the accused belongs. If an inquiry of a juror as to his political opinions and associations could ever be appropriate in any case arising under the statute in question, it could only be when it is made otherwise to appear that the particular juror has himself by his conduct or declarations given reason to believe that he will regard the case as one involving the interests of political parties rather than the enforcement of a law designed for the protection of the public against frauds in elections. [158 U. S. 414–415.]

It is not seriously to be questioned that a juror's political preferences might well create a bias against a defendant of another political persua-

sion. Therefore in the *Connors case* it is readily to be seen that the court refused the right to counsel to interrogate prospective jurors on a proposition which might well have aided counsel for the defendant in exercising his judgment in the matter of peremptory challenge. Apparently in that case this Court was persuaded that there was some limit to the lengths to which counsel for the defendant might go in the matter of eliciting information as to possible bias or prejudice. There is no essential difference in principle between the *Connors case* and the case at bar. It would be hazardous to estimate the number of considerations in the world that might impel a juror to assume some bias against a party to a trial. There is always the possibility that some prejudice might arise from the matter of defendant's race, religion, color, political affiliation, business, place of birth, past record, appearance, fraternal connection, manner, or dress.

It would seem that a court would go to unusual lengths if it would allow prospective jurors to be interrogated as to whether they would have a bias against the defendant because defendant had forsaken religious congregation "A" to join religious congregation "B."

It would seem that the true rule is, not that a juror may be interrogated as to every consideration under the sun which might conceivably or possibly prevent him from being impartial, but that there

must be some reasonable limitation to be placed upon such questioning.

Therefore in proceeding to ascertain where the line should be drawn it is well to consider the manifest purpose of our Government in seeking to eradicate all discriminations based on race, color, or creed. It is respectfully submitted that to allow in the courts of the United States inquiries based on racial and religious prejudices would work infinite harm. With the Constitution and the statutes of the United States pointing the way to an administration of law in a manner that treats all men as equal, it would appear that the injection of topics such as these in the trial of causes would be pernicious in its effect.

Special attention is directed to that portion of the court's opinion in this case wherein it was suggested that local conditions in the District do not make necessary such inquiries. The Supreme Court of the District of Columbia and the Court of Appeals for the District are in an admirable position to judge of local conditions. And ordinarily a reviewing court will not lightly disturb a trial court on a matter wherein the trial court has exercised its discretion without manifest abuse.

Counsel for the petitioner presents no applicable Federal case. A few State cases are set forth wherein it was held proper to ask such a question. However, these cases fall into two categories. The first group comes from the Southern States, where

such a question may be regarded as possibly proper in the State courts because of the social conditions existing, as evidenced by "Jim Crow" laws and regulations dealing with residential segregation. The other group comes from the West Coast and deals with interrogatories concerning racial prejudice as against Chinese. In view of the Chinese exclusion laws, it is not difficult to appreciate the regrettable necessity of this doctrine in that section of the country.

With regard to the form of the question sought to be asked, it is interesting to note the case of *Cavitt v. The State*, 15 Texas Appeals, 190. The court, on a trial of a negro for murder, refused to permit defendant's counsel to ask a juror whether he had "the same neighborly regard for this defendant, though a negro, and his race generally, as you have for individuals of the white race?" This was held not to constitute error, the court saying (p. 199):

> It is true that proper questions to test the bias in favor of, or the prejudice against a defendant, should be allowed in examining as to the fitness of a person offered as a juror to serve as such. But a question, to be proper, should be directed to the issue as to whether or not the person proposed as a juror is impartial, and in a condition of mind and feeling to try the case fairly. We can not perceive that the question proposed by the defendant would be a proper one. If answered by the person to whom pro-

pounded in the negative, it certainly would not disqualify him as a juror, nor would it show that he was prejudiced against the defendant, or the defendant's race, nor that such person would be likely to be influenced in his verdict because he did not have the same "neighborly regard" for a negro that he had for a white man. If this were held to be sufficient cause to disqualify a person from serving as a juror, then all juries would have to be selected with reference to the race, nationality or class to which the defendant belonged; * * * So with the Mexican, the Irishman, the German; they have a greater neighborly regard for their own countrymen than for an American, and the American has a stronger neighborly regard for one of his own country than for a foreigner. This same objection as to neighborly regard would apply to *classes* as well as to races or nationalities; to farmers, merchants, mechanics, doctors, lawyers, etc. An individual generally has a stronger neighborly regard for one of his own class than for one of a different class.

CONCLUSION

An analysis of the situation presented by the refusal of the court to ask this question reveals first that the question itself was improper; second, that the question was couched in objectionable form; third, that the question could be asked in a court of the United States only with deplorable

results, by reason of its tendency to incite prejudices which are foreign to the atmosphere which the Constitution and the laws of the United States seek to maintain in the Federal courts.

It is respectfully submitted that the judgment of the Court of Appeals of the District of Columbia should be affirmed.

LEO A. ROVER,
*United States Attorney.*
NEIL BURKINSHAW,
*Assistant United States Attorney.*

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The Solicitor General does not join in this brief. The United States Attorney who has signed this brief is authorized to do so, and to present the case orally in behalf of the United States.

THOMAS D. THACHER,
*Acting Attorney General.*

MARCH, 1931.

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